



U.S. Citizenship  
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**MAY 05 2004**

FILE: [REDACTED]  
WAC 03 053 52303

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner: [REDACTED]

Beneficiary [REDACTED]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. See Decision of the Director, dated May 27, 2003.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

... shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. ...

The Petition for Alien Fiancé(e) (Form I-129F) was filed with the Immigration and Naturalization Service [now Citizenship and Immigration Services] on December 5, 2002. The divorce decree submitted by the petitioner to evidence the termination of his marriage to his previous spouse reflects January 24, 2003 as the date that the divorce was finalized. Further, official documentation submitted by the petitioner reflects two different first names for the petitioner. The aforementioned divorce decree reflects the parties as [REDACTED] and [REDACTED].

The submitted United States birth certificate of the petitioner, however, bears the name [REDACTED]. The record does not establish that the named individuals are one and the same person.

On appeal, the petitioner submits a letter stating that he believed his divorce was finalized in August 2001 and only found out that it was not when he sought a copy of the decree for purposes of filing the instant petition. See Letter from [REDACTED] dated June 25, 2003. The petitioner states further that he is known by both the name [REDACTED] and the name [REDACTED] and uses the two interchangeably. *Id.*

Taking into account the totality of the circumstances as the petitioner has presented them, the AAO finds that the petitioner has not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. The petitioner was not legally able to conclude a valid

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marriage at the time of the filing of the petition as required under section 214(d) of the Act. Further, the petitioner has not established that [REDACTED] and [REDACTED] are the same individual. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.